

HEARING DATE: OCTOBER 5, 2000  
HEARING TIME: 10:00 A.M.

TODTMAN, NACHAMIE, SPIZZ & JOHNS, P.C.  
Attorneys for All In Fun Enterprises, Inc.  
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(248) 642-0500  
Robert D. Gordon (P48627)  
E. Todd Sable (P54956)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

RANDALLS ISLAND FAMILY GOLF  
CENTERS, INC., et al.,

Chapter 11  
Case Nos. 00-41065 (SMB)  
through 00-41196 (SMB)

Debtors.

(Jointly Administered)

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**NOTICE OF MOTION FOR ORDER COMPELLING  
THE PAYMENT OF POSTPETITION INTEREST  
AND LATE CHARGES PURSUANT TO SECTION 363  
AND 506(b) OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE**, that upon the motion (the "Motion") of All In Fun Enterprises, Inc. ("AIF"), by its attorneys, Todtman, Nachamie, Spizz & Johns, P.C. and Jackier, Gould, Bean, Upfal & Eizelman, the undersigned shall move this Court before the Honorable Stuart M. Bernstein, Chief United

States Bankruptcy Judge in his courtroom #729 at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York **on the 5th day of October, 2000 at 10:00 A.M.**, in the forenoon of that day or as soon thereafter as counsel may be heard, for an order pursuant to §506(b), 363 and 105 of the Bankruptcy Code compelling GBCC Family Golf Centers, Inc. to immediately pay to AIF postpetition interest, late charges and related charges due under the loan documents between the Debtor and AIF and such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the Motion, must be filed with the clerk of the bankruptcy court (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and received by the attorneys for AIF at the address set forth below no less than three (3) days before the return date of the Motion.

Dated: New York, New York  
September 15, 2000

TODTMAN, NACHAMIE, SPIZZ & JOHNS, P.C.  
Attorneys for All In Fun Enterprises, Inc.

By: /s/ SCOTT S. MARKOWITZ  
Scott S. Markowitz (SSM-0849)  
A Member of the Firm  
425 Park Avenue  
New York, New York 10022  
(212) 754-9400

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UNITED STATES BANKRUPTCY COURT  
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In re:

RANDALLS ISLAND FAMILY GOLF	:	Chapter 11
CENTERS, INC., <u>et al.</u> ,	:	Case Nos. 00-41065 (SMB)
	:	through 00-41196 (SMB)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**MOTION OF ALL IN FUN ENTERPRISES, INC. FOR ORDER PURSUANT TO  
SECTION 506(b) OF THE BANKRUPTCY CODE COMPELLING PAYMENT OF  
POSTPETITION INTEREST AND LATE CHARGES**

TO: THE HONORABLE STUART M. BERNSTEIN,  
CHIEF UNITED STATES BANKRUPTCY JUDGE

All In Fun Enterprises, Inc. ("AIF"), a creditor herein, by its counsel, Todtman, Nachamie,  
Spizz & Johns, and Jackier, Gould, Bean, Upfal & Eizelman, for its Motion for Order Pursuant to

Section 506(b) of the Bankruptcy Code Compelling Payment of Postpetition Interest and Late Charges (the Motion), states as follows:

### **Background**

1. On May 4, 2000 (the "Petition Date"), each of the Debtors in these jointly administered Chapter 11 cases (collectively, the "Debtors") filed Voluntary Petitions for relief pursuant to Chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate and manage their businesses, respectively, as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. GBGC Family Golf Centers, Inc. ("GBGC") is one of the affiliated Debtors herein. Among the golf facilities operated by GBGC is Golden Bear Golf Center at Oasis (the "Golf Center"), located at 39500 Five Mile Road in Plymouth, Michigan, which is operated pursuant to a January 31, 1997 Lease Agreement between AIF and Golden Bear Golf Centers, Inc., the predecessor-in-interest to GBGC (the "Lease Agreement").

### **The Note and Security Agreement**

3. On September 30, 1997, GBGC executed a Promissory Note, to AIF, in the principal amount of \$1.8 million, which Promissory Note was later replaced by three separate Promissory Notes (collectively, the "Notes") from GBGC to AIF, in the principal amounts of \$800,000.00, \$600,000.00, and \$400,000.00, respectively (collectively, the "Principal Amount"). GBGC is indebted to AIF, under the Notes, as of September 1, 2000, in the approximate, prepetition principal amount of \$1,402,301.13 (the "Claim").<sup>1</sup> A copy of the Notes are attached hereto as Exhibit "A" and incorporated herein by reference.

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<sup>1</sup> GBGC is further indebted to AIF for certain amounts accruing after the Petition Date.

4. Pursuant to the Notes, among other things, GBGC agreed to pay interest on the Principal Amount at the rate of 1.25 percent per annum above the prime rate, as announced by the Wall Street Journal (the "Interest Rate"). In addition, among other things, GBGC agreed to pay, to AIF, commencing on November 1, 1997, and continuing on the first day of each month thereafter installments equal to the outstanding interest on the Principal Amount, plus principal payments based upon a ten (10) year amortization schedule. In addition, commencing on the first anniversary of the Notes and annually thereafter, GBGC agreed to remit additional principal payments under the Notes, in the amount of \$11,111.11 and \$22,222.22, respectively.

5. In addition, pursuant to the Notes, among other things, GBGC agreed that if any payment due thereunder is not paid within fifteen (15) days of the date due, GBGC shall pay a late payment charge (for each month (or fraction thereof) that any payment(s) remain unpaid) equal to the lesser of five percent (5%) of the late payment(s) or the maximum amount permitted by law.

6. Contemporaneous with the execution of the Notes, GBGC further executed a Security Agreement, dated January 31, 1997 (the "Security Agreement"), also in favor of AIF, pursuant to which GBGC granted to AIF a security interest in all of the property of the Golf Center acquired by GBGC pursuant to Agreement between AIF as Seller and Brian Ashley and GBGC as Purchaser, dated January 1997, and a certain Addendum to Agreement, dated January 31, 1997, and more particularly being, but not limited to, the property associated with the Golf Center (the "Collateral"). A copy of the Security Agreement and the financing statements are annexed hereto as Exhibit "B" and incorporated herein by reference.

**AIF is an Oversecured Creditor of GBGC**

7. AIF submits that the Collateral has a fair market value of at least \$2.75 million. This is based upon, among other things, that:

1. Golden Bear purchased the Golf Center in 1997 for the sum of \$3.2 million, which purchase price was inclusive of, among other things, leasehold improvements, personal property, and goodwill. The 1996 EBITDA for the Golf Center equaled approximately \$565,000.00.
2. Dividing the \$3.2 million purchase price by the \$565,000.00 1996 EBITDA yields a factor of 5.66.
3. Upon information and belief, the 1999/2000 EBITDA for the Golf Center equaled not less than the approximate sum of \$650,000.00. However, using a factor of only 5.00 and an EBITDA of \$550,000.00 (each of which have been reduced from their respective, actual estimated amounts to conservatively account for error) yields a valuation of \$2.75 million.

8. Any claim that is for an amount less than the value of the property it secures is oversecured. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 239, 109 S.Ct. 1026, 103 L.Ed. 2d 290 (1989). GBGC is indebted to AIF, under the Notes, in at least the amount of the Claim, which, pursuant to the Security Agreement, is secured by the Collateral. Thus, because the fair market value of the Collateral is at least of \$2.75 million, being an amount in excess of the Claim (being, to date, minimally the sum of \$1,402,301.13), AIF is an oversecured creditor of GBGC. *Id.*

**The Standard Pursuant to Section 506 of the Bankruptcy Code for Payment of Postpetition Interest on an Oversecured Claim, Plus Fees, Costs and Other Charges**

9. Section 506(a) of the Bankruptcy Code states, in pertinent part, as follows:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of such creditors interest in the estates interest in such property . . . .

10. Section 506(b) of the Bankruptcy Code states as follows:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

11. "In a bankruptcy case, interest is the tail of the dog, but it is a long tail and it wags a lot." *Key Bank National Assoc. v. Milham*, 141 F.3d 420, 422 (2d Cir. 1998), quoting D. Pawlowic, Entitlement to Interest Under the Bankruptcy Code, 12 Bankr. Dev. J. 149, 150 (1995). Section 506(b) of the Bankruptcy Code "entitles the holder of an oversecured claim to postpetition interest and, in addition, gives one having a secured claim created pursuant to an agreement the right to reasonable fees, costs, and charges provided for in that agreement." *Ron Pair Enterprises, supra.*, 489 U.S. at 241.

12. The Bankruptcy Code provides for three categories of interest, as follows: (1) prepetition interest (being interest accrued prior to the petition date); (2) pendency interest (being interest accrued postpetition but prior to the effective date of a debtors plan of reorganization); and (3) plan interest (being interest accrued pursuant to the terms of a confirmed plan). *Key Bank, supra*, 141 F.3d at 423; *In re Liberty Warehouse Assocs. Limited Partnership*, 220 B.R. 546, 548 (S.D.N.Y. 1998). Unlike prepetition interest, an oversecured creditors right to pendency interest under Section

506(b) is unqualified and exists without regard to whether the underlying contract, pursuant to which such creditors claim arises, provides for interest. *Rake v. Wade*, 508 U.S. 464, 468, 113 S.Ct. 2187, 124 L. Ed. 2d 424 (1993); *Key Bank*, *supra*, 141 F.3d at 423. Pendency interest accrues until payment of the secured claim or confirmation of a plan. *Rake*, *supra*, 508 U.S. at 468, citing 3 Collier on Bankruptcy & 506.05, n. 5c (15<sup>th</sup> ed. 1993); *Key Bank*, *supra*, 141 F.3d at 423.

13. The rate of pendency interest is within the sound discretion of the court, but is generally awarded at the contract rate. *Key Bank*, *supra*, 141 F.3d at 423.

14. In addition, the holder of an oversecured claim is entitled to reasonable fees, costs, and charges provided for in the underlying contract pursuant to which the creditors claim arises. *Ron Pair Enterprises*, *supra*, 489 U.S. at 241.

**AIF is Entitled to Pendency Interest and Late Charges, Fees, and Costs Pursuant to Section 506(b) of the Bankruptcy Code**

15. A plan of reorganization has not yet been confirmed in this bankruptcy case, nor has the Claim been paid. Thus, as an oversecured creditor of GBGC, AIF is entitled to pendency interest and late charges, fees, and costs on the Claim. 11 U.S.C. § 506(b); *Rake*, *supra*, 508 U.S. at 468; *Ron Pair Enterprises*, *supra*, 489 U.S. at 239-41; *Key Bank*, *supra*, 141 F.3d at 422-23; *Liberty Warehouse Assocs.*, *supra*, 220 B.R. at 548, 551. Such interest and late charges, accruing from the Petition Date through the date of entry of an Order pursuant to this Motion, should be paid by GBGC to AIF immediately and, prospectively, on a monthly basis through the effective date of any plan which may hereafter be confirmed in GBGC's pending Chapter 11 case (at which point AIF would be entitled to plan interest), or until such time as the Claim is otherwise paid in full. *Key Bank*, *supra*, 141 F.3d at 423; *Liberty Warehouse Assocs.*, *supra*, 220 B.R. at 548. Interest should be paid



to AIF at the contract rate provided for in the Note, being the prime rate (as announced by the Wall Street Journal as of the Petition Date) plus 1.25 percent. *Key Bank, supra*, 141 F.3d at 423.

16. Interest and late charges are due and owing on the Notes, in the following amounts<sup>2</sup>:

<b>Date Due and Owing</b>	<b>Interest Due and Owing</b>	<b>Late Charges Due and Owing</b>	<b>Total</b>
October 1, 2000	\$11,101.55	\$17,653.98	<b>\$28,755.53</b>
November 1, 2000	\$11,101.55	\$9,572.00	<b>\$20,673.55</b>
December 1, 2000	\$11,101.55	\$10,738.52	<b>\$21,840.07</b>
January 1, 2001	\$11,101.55	\$11,915.46	<b>\$23,017.01</b>
February 1, 2001	\$11,101.55	\$13,092.39	<b>\$24,193.94</b>
March 1, 2001	\$11,101.55	\$14,269.32	<b>\$25,370.87</b>
April 1, 2001	\$11,101.55	\$15,446.25	<b>\$26,547.80</b>
May 1, 2001	\$11,101.55	\$16,623.18	<b>\$27,724.73</b>

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2. AIF has prepared this schedule through September 1, 2001, prospectively. In the event that a plan of reorganization has not been confirmed by that date, AIF is prepared to submit a further schedule of interest and late charges on and after October 1, 2001.

June 1, 2001	\$11,101.55	\$17,800.12	<b>\$28,901.67</b>
July 1, 2001	\$11,101.55	\$18,977.05	<b>\$30,078.60</b>
August 1, 2001	\$11,101.55	\$20,153.98	<b>\$31,255.53</b>
September 1, 2001	\$11,101.55	\$21,330.91	<b>\$32,432.46</b>

17. In addition, pursuant to Paragraph 7 of each of the Notes, respectively, GBGC is further liable for all costs and expenses including, but not necessarily limited to, reasonable attorneys' fees, incurred by AIF in connection with collecting amounts due and owing, to AIF, by GBGC, under the Notes.

18. For the foregoing reasons, cause exists for this Court to enter an Order compelling GBGC to pay pendency interest and late charges on the Claim to AIF, under the Notes, as well as AIF's reasonable attorneys' fees and costs incurred in connection with bringing and prosecuting this Motion, pursuant to Section 506(b) of the Bankruptcy Code.

19. Since this Motion does not raise or involve any complex or novel issues of bankruptcy law, AIF respectfully represents that the court waive and dispense with the local rule requirement of filing a separate memorandum of law in support of the Motion.

**WHEREFORE**, AIF respectfully requests that this Court enter an Order, in the form of the proposed Order attached as Exhibit "C" hereto:

A. Directing GBGC to remit to counsel for AIF, Robert D. Gordon, Esq., Jackier, Gould, Bean, Upfal & Eizelman, 121 West Long Lake Road, Second Floor, Bloomfield Hills,

Michigan 48304, pendency interest and late charges on the Claim, in the amount set forth in said Order, on the first day of each month, commencing October 1, 2000 and continuing on the first day of each successive month through the effective date of any plan which may hereafter be confirmed or until such time as the Claim is otherwise paid in full, whichever occurs first; and

B. Directing GBGC to immediately remit to counsel for AIF, Robert D. Gordon, Esq., Jackier, Gould, Bean, Upfal & Eizelman, 121 West Long Lake Road, Second Floor, Bloomfield Hills, Michigan 48304, reimbursement of AIF's reasonable attorneys' fees and costs incurred in connection with bringing and prosecuting this Motion; and

C. Granting to AIF such other and further relief as this Court deems just and appropriate under the circumstances.

TODTMAN, NACHAMIE, SPIZZ & JOHNS, P.C.  
Attorneys for All In Fun Enterprises, Inc.

BY: /s/ SCOTT S. MARKOWITZ  
SCOTT S. MARKOWITZ  
425 Park Avenue  
New York, New York 10022  
(212) 754-9400

*-and-*

JACKIER, GOULD, BEAN, UPFAL & EIZELMAN  
ROBERT D. GORDON (P48627)  
E. TODD SABLE (P54956)  
121 West Long Lake Road, Second Floor  
Bloomfield Hills, Michigan 48305  
(248) 642-0500

Dated: September 15, 2000

**EXHIBIT "A"**

**GBCC FAMILY GOLF CENTERS, INC. \$800,000.00 PROMISSORY NOTE**

**GBCC FAMILY GOLF CENTERS, INC. \$600,000.00 PROMISSORY NOTE**

**GBCC FAMILY GOLF CENTERS, INC. \$400,000.00 PROMISSORY NOTE**

**INTENTIONALLY OMITTED**

**CONTACT COUNSEL FOR ALL IN FUN ENTERPRISES FOR COPIES**

**EXHIBIT "B"**

**SECURITY AGREEMENT GOLDEN BEAR GOLF CENTERS, INC.**

**INTENTIONALLY OMITTED**

**CONTACT COUNSEL FOR ALL IN FUN ENTERPRISES FOR COPY**

**EXHIBIT "C"**

TODTMAN, NACHAMIE, SPIZZ & JOHNS, P.C.  
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UNITED STATES BANKRUPTCY COURT  
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	:	through 00-41196 (SMB)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**ORDER PURSUANT TO SECTION 506(b) OF THE BANKRUPTCY CODE  
COMPELLING PAYMENT OF POSTPETITION INTEREST AND LATE CHARGES**

This matter having come before the Court upon the Motion of All In Fun Enterprises, Inc. ("AIF") For Order Pursuant to Section 506(b) of the Bankruptcy Code Compelling Payment of Postpetition Interest and Late Charges (the "Motion"); and the Court having considered the Motion and any arguments of counsel made with regard to this matter; and no further notice or hearing on the Motion being necessary or required; and the Court being otherwise duly advised in the premises, and finding good cause for entry of this Order;

NOW, THEREFORE, IT IS HEREBY ADJUDGED AND ORDERED that:

A. Debtor GBGC Family Golf Centers, Inc. ("GBGC") shall remit to counsel for AIF, Robert D. Gordon, Esq., Jackier, Gould, Bean, Upfal & Eizelman, 121 West Long Lake Road, Second Floor, Bloomfield Hills, Michigan 48304, pendency interest and late charges on the Claim, in the amounts due on the first day of each month, commencing October 1, 2000 and continuing on the first day of each successive month through the effective date of any plan which may hereafter be confirmed, as set forth below:<sup>3</sup>

<b>Date Due and Owing</b>	<b>Interest Due and Owing</b>	<b>Late Charges Due and Owing</b>	<b>Total</b>
October 1, 2000	\$11,101.55	\$17,653.98	<b>\$28,755.53</b>
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<sup>3</sup> In the event that a plan of reorganization of GBGC has not been confirmed by September 1, 2001, AIF may submit a further schedule of interest and late charges owing on and after October 1, 2001.

June 1, 2001	\$11,101.55	\$17,800.12	<b>\$28,901.67</b>
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September 1, 2001	\$11,101.55	\$21,330.91	<b>\$32,432.46</b>

B. GBGC shall further immediately remit to counsel for AIF, Robert D. Gordon, Esq., Jackier, Gould, Bean, Upfal & Eizelman, 121 West Long Lake Road, Second Floor, Bloomfield Hills, Michigan 48304, reimbursement of AIF's reasonable attorneys' fees and costs incurred in bringing and prosecuting the Motion in the amount of \$\_\_\_\_\_.

Dated: New York, New York  
October \_\_\_\_, 2000

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UNITED STATES BANKRUPTCY JUDGE